

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

TREVIS TYRELL SISTRUNK

*

Plaintiff,

*

v.

* CIVIL ACTION NO. 3:04-CV-1175-T
(WO)

CHARLES WALLACE

*

Defendant.

*

RECOMMENDATION OF THE MAGISTRATE JUDGE

On July 7, 2005 counsel for Defendant filed a submission with this court reflecting Plaintiff's wish to forego further prosecution in this matter. (Doc. No. 11.) Defendant's submission shows that on May 2, 2005 counsel for Defendant mailed Plaintiff a *Form AO 85* which gives notice of availability of a United States Magistrate Judge to conduct any or all proceedings in this case including a jury or non-jury trial and to order entry of a final judgment. (*Id.*) In response, Plaintiff sent correspondence to Defendant's counsel dated June 28, 2005 wherein Plaintiff states that he is "no longer interested in case # 3:04-cv-1175-T." (*Id.*) In light of the foregoing, the undersigned entered an order on July 12, 2005 directing Plaintiff to show cause why this case should not be dismissed in light of his expressed desire to forego further prosecution of this case. (*See* Doc. No. 12.)

The requisite time has passed and Plaintiff has filed no response to the court's July 12, 2005 order. Consequently, the court concludes that Plaintiff's failure to comply with the orders of this court and his stated wish to forego further prosecution of this cause of action

warrant dismissal of this case.

For the foregoing reasons, it is the RECOMMENDATION of the Magistrate Judge that this case be dismissed without prejudice.

It is further

ORDERED that the parties are DIRECTED to file any objections to the said Recommendation on or before **August 10, 2005**. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

Done, this 1st day of August, 2005.

/s/ Delores R. Boyd

DELORES R. BOYD
UNITED STATES MAGISTRATE JUDGE